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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/687,846	10/13/2000	Cher Esque	3993968-128859	7769
23570	7590	12/23/2005	EXAMINER	
PORTER WRIGHT MORRIS & ARTHUR, LLP INTELLECTUAL PROPERTY GROUP 41 SOUTH HIGH STREET 28TH FLOOR COLUMBUS, OH 43215			LASTRA, DANIEL	
			ART UNIT	PAPER NUMBER
			3622	

DATE MAILED: 12/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/687,846	ESQUE, CHER
	Examiner DANIEL LASTRA	Art Unit 3622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 07 October 2005.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1,3-15 and 17-22 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1,3-15 and 17-22 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date . . . .  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: . . . .

### **DETAILED ACTION**

1. Claims 1, 3-15 and 17-22 have been examined. Application 09/687,846 (SOFTWARE AND METHOD FOR MARKETING ARTISTS) has a filing date 10/13/2000.

#### ***Response to Amendment***

2. In response to Final Rejection filed 05/05/2005, the Applicant filed an RCE on 10/07/2005, which amended claim 1, 20 and added new claims 21 and 22.

#### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 21 and 22 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 21 and 22 recites "contact data includes non public information utilized only by employees of the company". Nowhere, in the Applicant's specification said limitation is recited or claimed.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 21 and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which

applicant regards as the invention. Claims 21 and 22 recites "contact data includes non public information utilized only by employees of the company". Nowhere, in the Applicant's specification said limitation is recited. For purpose of art rejection, said limitation would be interpreted as contact data related to a particular individual includes private contact data.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 8 and 12-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leeke et al (U.S. 6,587,127).

As per claim 1, Leeke teaches:

A software product for *internally organizing a company's marketing of marketing entities*, the software product comprising:

a computer program operational when executed by a computer processor to direct the computer processor to generate a main navigational window viewable on a computer display and having a plurality of links, the plurality of links including a marketed entities link and an avenues link (see column 5, lines 25-31; column 7, line 63

– column 8, line 16; column 9, lines 17-25; figures 2, 8, 12, 13 20, 22-27; column 32, line 63 – column 33, line 9);

wherein the computer program is operational when executed by the computer processor upon activation of the plurality of links to direct the computer processor to generate additional windows viewable on the computer display (see column 5, lines 25-31; column 7, line 63 – column 8, line 16; column 9, lines 17-25; figures 2, 8, 12, 13 20, 22-27)

wherein the marketed entities link opens a marketed entities window having data fields for entering and viewing contact data relating to *particular individuals of the* particular marketed entities and the avenues link opens an avenues window having data fields for entering and viewing contact data relating to *particular individuals* at different avenues of marketing *used for marketing the particular marketed entities*; and a computer program storage medium operational to store the computer program (see column 5, lines 25-31; column 7, line 63 – column 8, line 16; column 9, lines 17-25; figures 2, 8, 12, 13 20, 22-27; column 32, line 63 – column 33, line 9);

wherein the plurality of links includes an events link and the event link opens an events window having data fields for entering and viewing contact data relating to *particular individuals associated with* particular events *used for marketing the particular marketed entities* (see column 32, line 63 – column 33, line 9; figure 2, item 245) ;

wherein the avenues window provides access to data fields for entering and viewing contact data relating to radio, retail, media, and venues (see figures 2, 3, 8, 12 and 13);

wherein the data fields are linked by unique identifiers to form a relational database so that particular events are linked to the contact data for *the particular individuals* of the particular marketed entities and the contact data for *the particular individuals* at the particular avenues of marketing (see column 32, line 63 – column 33, line 9).

Leeke does not expressly teach wherein the contact data relating to *the particular individuals* of the particular marketed entities, *the particular individuals* at the different avenues of marketing, and the *particular individuals* associated with *the particular events* each include a name, a postal address, a phone number, and an email address. However, Leeke teaches a system where users rate marketed entities and provide feedback messages to said marketed entities via e-mail (see column 7, lines 17-31). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that marketed entities, such as artists would make available their contact information (i.e., name, phone numbers, e-mail and/or addresses) to users, so said users provide said marketed entities with feedback about said marketed entities' products. This way marketed entities would have suggestions from users about how to improve said marketed entities' products.

As per claim 3, Leeke teaches:

The software product according to claim 1, wherein the avenues window includes a radio link for opening a radio window having data fields for entering and viewing contact data relating to a radio station (see figure 2), a retail link for opening a retail window having data fields for entering and viewing contact data relating to a retail outlet

(see figure 50), a media link for opening a media window having data fields for entering and viewing contact data relating to media (see figure 52-56), and a venue link for opening a venue window having data fields for entering and viewing contact data relating to a venue (see figure 13; column 5, lines 25-31; column 7, line 63 – column 8, line 16; column 9, lines 17-25).

As per claim 4, Leeke teaches:

The software product according to claim 1, wherein the marketed entities window provides access to data fields for entering and viewing data relating to a particular marketed entity, members associated with the particular marketed entity, and products associated with the particular marketed entity (see figures 20-21; 25-27; column 10, lines 5-15).

As per claim 8, Leeke teaches:

The software product according to claim 1, wherein the marketed entities window includes a marketed entities tab for opening a window layer having data fields for entering and viewing data relating to a particular marketed entity, a members tab for opening a window layer having data fields for entering and viewing data relating to members associated with the particular marketed entity, and a products tab for opening a window layer having data fields for entering and viewing data relating to products associated with a particular marketed entity (see figures 49-50).

As per claim 12, Leeke teaches:

The software product according to claim 1, wherein the particular marketed entities are particular artists and data fields are provided to store submissions of an

artist by name and format (see column 13, lines 13-21; figures 20-21; column 32, lines 47-62).

As per claim 13, Leeke teaches:

The software product according to claim 12, wherein the format is one of a plurality of predetermined formats (see column 13, lines 13-21).

As per claims 14 and 15, Leeke teaches

The software product according to claim 12, wherein stored data can be moved between active and archived status and data in archived status can be retrieved by at least one of format, the marketed entities, and the contact data (see column 1, lines 14-20).

As per claim 17, Leeke teaches:

The software product according to claim 1, wherein the events window includes data fields for entering and viewing an event type for each particular event and the event type is one of a plurality of predetermined event types (see figures 13-14; column 16, lines 1-25).

As per claim 18, Leeke teaches:

The software product according to claim 1, wherein the events window categorizes event data according to avenues of marketing including radio, retail, media, and venue (see figures 3, 8, 12, 13).

As per claim 19, Leeke teaches:

The software product according to claim 1, wherein the plurality of links includes a search links and the search link opens a search window having data fields for entering

and storing data relating to parameters of a search of stored data and the data fields of the search window are adjusted according to a selected avenue of marketing including radio, retail, media, and venue (see figures 22, 23).

Claims 5-7 and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leeke et al (U.S. 6,587,127) in view of White et al (U.S. 6,628,302).

As per claim 5, Leeke teaches the software product according to claim 4, but fails to teach wherein the particular marketed entities includes a particular artist and the marketed entities window provides access to data fields for entering and viewing data relating to tour dates associated with the particular artist, and an itinerary associated with the particular artist. White teaches a system that presents information related to the selection of particular artists, such as artist's biography, critic reviews, listing of other recording of the same selection by different artists, the artist's upcoming concert schedule, etc (see column 7, lines 1-22). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Leeke would present upon user's selection, the artist's upcoming schedule, as taught by White. This feature would help users know the artist's schedule and have the possibility of seeing the artist performs live.

As per claim 6, Leeke and White teach the software product according to claim 5, wherein the marketed entities window provides access to data fields for entering and viewing data relating to biographical information associated with the particular artist, and affiliations associated with the particular artist. White teaches a system that presents information related to the selection of particular artists, such as artist biography, critic

reviews, listing of other recording of the same selection by different artists, the artist's upcoming concert schedule, etc (see column 7, lines 1-22). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Leeke would present upon user's selection, the artist's biography and related affiliations, as taught by White. This feature would help users obtain more personal information about their favorite artists.

As per claim 7, Leeke and White teach the software product according to claim 5, wherein the marketed entities window provides access to data fields for entering and viewing data relating to notes associated with the particular artist (see column 21, lines 1-16).

As per claims 9 and 20, Leeke teaches the software product according to claim 8, but fails to teach wherein the particular marketed entity is a particular artist and the marketed entities window includes a tour dates tab for opening a window layer having data fields for entering and viewing data relating to tour dates associated with the particular artist, and an itinerary tab for opening a window layer having data fields for entering and viewing data relating to an itinerary associated with the particular artist. However, the same rejection applied to claim 5 is applied to claim 9.

Claim 10, Leeke and White teach the software product according to claim 9, wherein the marketed entities window includes a biography tab for opening a window layer having data fields for entering and viewing data relating to a biography associated with the particular artist, and an affiliations tab for opening a window layer having data

fields for entering and viewing data relating to affiliations associated with the particular artist. See rejection of claim 6.

As per claim 11, Leeke and White teach the software product according to claim 9, wherein the marketed entity window includes a notes tab for opening a window layer having data fields for entering and viewing data relating to notes associated with the particular artist (see column 21, lines 1-16).

Claims 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leeke et al (U.S. 6,587,127) in view of de l'Etraz (US 6,073,138).

As per claims 21 and 22, Leeke teaches

*The software product according to claim 1, but does not expressly teach wherein the contact data relating to the particular individuals of the particular marketed entities, the particular individuals at the different avenues of marketing, and the particular individuals associated with the particular events includes nonpublic information utilized only by employees of the company. However, de l'Etraz teaches a database system that stores public and private information to be accessed by different users (see de l'Etraz column 15, lines 10-20). Leeke would be motivated to utilize the system taught by de l'Etraz in order to provide different level of access to employee's contact information for the purpose of keeping employee's sensitive information private from certain users.*

### ***Response to Arguments***

5. Applicant's arguments filed 10/07/2005 have been fully considered but they are not persuasive. The Applicant argues that the Leeke system cannot be used internally

by a company's marketing professional because it does not include nonpublic or private contact data. The Examiner answers that nowhere in the Applicant's specification is disclosed the limitation of private or non public contact data. The Applicant is using an inherency argument that because the Applicant's claimed invention database is used by a company, said company would only stored non public information in said database. However, Applicant's specification never explained that the novelty of his claimed invention is the storing of nonpublic data in a database. Therefore, even though Leeke does not expressly show the collected data including a nonpublic information. However this difference is only found in the nonfunctional descriptive material and is not functionally involved in the steps recited. The collecting of contact data would be performed the same regardless of the data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to collect from a customer any type of data, public or nonpublic because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention. The Examiner added the prior art reference de l'Etraz to only show that is old and well known to store private information in a database.

**Conclusion**

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 571-272-6720 and fax 571-273-6720. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ERIC W. STAMBER can be reached on 571-272-6724. The official Fax number is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DL  
Daniel Lastra  
November 26, 2005

  
RETTA YEHDEGA  
PRIMARY EXAMINER